

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)

THIS DOCUMENT RELATES TO:)

United States of America ex rel. Ven-a-Care of) MDL No. 1456
the Florida Keys, Inc. v. Abbott Laboratories,) Civil Action No. 01-12257-PBS
Inc., Civil Action No. 06-11337) Subcategory No. 06-11337-PBS

United States of America ex rel. Ven-a-Care of) Hon. Patti B. Saris
the Florida Keys, Inc. v. Dey LP, et al., Civil)
Action No. 05-11084)

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Boehringer)
Ingelheim Corp., et al., Civil Action No. 07-)
10248-PBS)

**MOTION OF THE UNITED STATES TO HAVE CERTAIN MOTIONS BY
DEFENDANTS HEARD BY THE DISTRICT COURT JUDGE IN CONJUNCTION
WITH PENDING MOTIONS**

The United States requests that certain motions filed by defendants in conjunction with summary judgment proceedings be heard by the District Court Judge either as part of the summary judgment hearing scheduled for October 20, 2009 (or a future date), or in conjunction with a future hearing regarding the *Daubert* motion filed by Abbott Laboratories. As explained in its accompanying memorandum in support, because the relief sought and the issues presented by these motions are significantly intertwined with issues raised in the summary judgment briefing and/or the pending *Daubert* motion, the United States believes that it would be more appropriate and efficient to have the motions heard by the District Court Judge, rather than holding argument during the discovery hearing to be held by the Magistrate Judge on September 14, 2009.

In response to the August 5, 2009, Order issued by Judge Bowler, defendants Abbott, Dey and Roxane listed the following as pending discovery motions that they wish to be heard during a September 14, 2009, hearing before Judge Bowler:

Abbott Laboratories Inc.'s Motion for Sanctions and for a Finding of Spoliation (MD #6096-97, SD #218-219);

Dey Inc.'s Motion for Sanctions and for a Finding of Spoliation (MD #6109-10, SD #222-223);

Roxane Defendants' Motion for Sanctions and for a Finding of Spoliation (MD #6254-55, SD #274-275);

Roxane Defendants' Expedited Motion for Leave to Depose Carolyn Helton and Robin Kreush Stone (MD #6328-6330, SD #333-335); and

Dey's Motion for Leave to Participate in the Depositions of Carolyn Helton and Robin Kreush Stone (MD #6384, SD #368).

The United States hereby moves the Court for an order stating that it would be more appropriate and efficient to have the motions heard by the District Court Judge, rather than holding argument during the discovery hearing to be held by the Magistrate Judge on September 14, 2009.

Dated: August 25, 2009

Respectfully submitted,

For the United States of America,

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/s/ Ann M. St. Peter-Griffith

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CERTIFICATE PURSUANT TO LOCAL RULE 7.1

I hereby certify that I have communicated with counsel for the defendants in an effort to resolve the dispute referred to in this motion, and that the parties have not been able to resolve or narrow the issues raised in this motion.

/s/ Laurie A. Oberembt
Laurie A. Oberembt

Dated: August 25, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above MOTION OF THE UNITED STATES TO HAVE CERTAIN MOTIONS BY DEFENDANTS HEARD IN CONJUNCTION WITH PENDING MOTIONS to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Ann M. St. Peter-Griffith

Dated: August 25, 2009

Ann M. St. Peter-Griffith